

### **REMARKS**

The Office Action rejected claims 1-16, 22 and 23. Claims 17-21 were previously withdrawn from consideration in response to a restriction requirement. By this Amendment, to expedite prosecution of this application, claims 1, 7-9, 11 and 22 are amended. Claims 1-16, 22 and 23 are currently pending in this application.

### **Section 102 Rejections**

The Office action rejected claims 1-4, 7-9, 11-13, 16 and 22-23 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 6,019,771 ("*Bennett*"). Further, the Office Action rejected claims 1 and 11 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,759,150 ("*Konou*"). Without acquiescing, in order to expedite prosecution, the Applicants have amended claim 1 to more completely and clearly point out and distinctly claim the features of the present invention. The Applicants expressly reserve all rights with respect to the previous versions of the claims, including the right to pursue them in future continuation applications.

Specifically, the claim 1 recites, in part, a vessel harvesting device with "a dissection portion disposed at the distal end of the shaft, the dissection portion having first and second portions." "[The] first portion [has] a first distal tip and the second portion [has] a second distal tip." "[An] actuator [is] operatively connected to the dissection portion and adapted to reciprocate the first portion between a first configuration wherein the first distal tip is proximal the second distal tip and a second configuration wherein the first distal tip is distal the second distal tip." "[The] dissection portion [is] adapted such that reciprocation of the first portion between the first and second configurations facilitates the dissection of tissues surrounding a vessel that is disposed through at least a portion of the gap."

None of the embodiments in either *Bennett* or *Kunou* have first and second portions as recited in claim 1, nor do they have portions that are adapted to reciprocate in the manner described in this claim. As such, this claim, and the claims which depend therefrom, are allowable over these references.

Claim 11 recites, in part, a "top portion [that defines] a concave portion with an open side and [a] bottom portion adapted to at least partially cover the open side of the concave portion such that the top and bottom portions together surround a portion of the vessel." In addition, "the first and second openings [provide] a pathway from the first opening, through the concave

portion and exiting one of the one or more second openings.” The *Bennett* and *Kunou* references are missing at least the top of bottom portions and the pathway recited in claim 11. As such, claim 11, and the claims which depend therefrom, are allowable over these references.

Claim 22 recites, in part, “a top [and a bottom] portion connected to the vessel harvesting device, ... the top portion being spoon shaped.” Nothing in either *Bennett* or *Kunou* disclose a spoon shaped top portion as recited in this claim. As such, this claim, and the claims which depend therefrom, are allowable over these references.

### **Section 103 Rejections**

The Office action rejected claim 10 under 35 U.S.C. § 103(a) as being unpatentable over *Bennette*. Further, the Office action rejected claims 5-6 and 14-15 under 35 U.S.C. § 103(a) as being unpatentable over *Konou*. As indicated above, neither *Bennett* or *Kunou* teach, suggest or otherwise provide the structures recited in claims 1 and 11. As such, these claims, and the claims which depend therefrom, are allowable over these references.

### **Conclusion**

For the reasons explained above, all pending claims are now in condition for allowance. Accordingly, the applicant respectfully requests that the Office issue a Notice of Allowance.

Any amendments to the claims are made to expedite prosecution of this application, without acquiescing to the Office’s rejections or characterizations of the claims or references in the Office Action. Even if not expressly discussed above, the applicant respectfully traverses each of the rejections, assertions, and characterizations regarding the disclosure and teachings of the cited references, including the prior art status and the propriety of proposed combinations of cited references.

The applicant has made a good faith effort to respond to all rejections set forth in the Office Action and to place the pending claims in condition for immediate allowance. If the Examiner has any questions or comments, the Examiner is requested to contact the undersigned at 612/766-6852.

Respectfully submitted,

FAEGRE & BENSON LLP

Dated: September 14, 2009

By: /Adrian R. Eggen REg#59,361/  
Adrian R. Eggen  
Reg. No. 59,361  
612/766-6852  
Customer No.: 25764